Implementation of Act 162 of 2014

December 17, 2014
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2. Impact of Act 162
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4. Offsetting
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What is Act 162 of 2014?

• Introduced as HB 1565
• Amended Pennsylvania Clean Streams Law (CSL)
  – New Section 402(c)
  – NPDES stormwater construction permit applicants may choose either to implement riparian buffers or riparian forest buffers OR to implement equivalent best management practices (BMPs) in certain cases
  – Requires offsetting buffers in certain cases
• Does not eliminate use of riparian buffers as a BMP
Scope of Act 162

- NPDES permits located within 150 feet of certain High Quality or Exceptional Value waters
- Does not apply to, nor change process in 25 Pa. Code § 102.14, for non-NPDES permits
  - ESCGP permits for oil and gas activities or
  - ESC permits for road maintenance and timber harvesting
- Does not affect voluntary riparian buffer programs; example CREP
• New § 402(c)(1) of CSL provides an alternative to mandatory riparian buffers or riparian forest buffers
• New § 402(c)(2) of CSL provides that when a buffer is not used and if earth disturbance is conducted within 100 feet of a special protection water, offsetting is required
Equivalency Demonstration

- New § 402(c)(1)(ii)
- Applicants choosing not to implement the riparian buffer or riparian forest buffer, must make a demonstration that the BMPs that they will implement will be equivalent to the type of buffer required in 102.14(a)(1) and (2)
- Demonstration is both quantitative and qualitative in nature
Offsetting

• New § 402(c)(2) triggered when applicant proceeds under 402(c)(1)(ii)

• New § 402(c)(2) requires offsetting:
  – As close as feasible and be within the same drainage list of the project
  – 1:1 ratio for replacement riparian buffer is required
  – Include other BMPS to manage stormwater
## Impact on Permits – New Permits

<table>
<thead>
<tr>
<th>Applications for new individual NPDES stormwater construction permits</th>
<th>Prior to 12/21/2014</th>
<th>On or after 12/21/2014</th>
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</table>
| Must meet pre-Act 162 regulatory requirements related to riparian buffers; if within 150 feet of a special protection river, stream, creek, pond, lake or reservoir, must apply for a waiver. | Must be consistent with Act 162.  
• Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir  
• If not using a riparian buffer, earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset.  
• Equivalency demonstration guidance and offsetting guidance will be tools to assist in these demonstrations. |
## Impact on Permits - Renewals

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<th>Applications for individual NPDES stormwater construction permit renewals with grandfathering related to 102.8</th>
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- If a riparian buffer is not used, earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset.  
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## Impact on Permits - Modifications

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  - Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir  
  - If no riparian buffer and earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset.  
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## Impact on Permits - Phased

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• Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone, measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir  
• If no riparian buffer is used earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset  
• Equivalency demonstration guidance and offsetting guidance will be tools to assist in these demonstrations. |
Implementation Tools

• Interim Final Policy: Implementation Plan for Act 162 of 2014 (310-2135-001)
  – December 20, 2014 Pennsylvania Bulletin
  – Department’s website: www.dep.state.pa.us

Choose:
• “Public Participation Center” then;
• “Public Comments” then;
• “Technical Guidance”

• Frequently Asked Questions (FAQ)
Implementation Tools

• Equivalency Demonstration Interim Technical Guidance (310-2135-002)
• Offsetting Interim Technical Guidance (310-2135-003)
• Training
• Rulemaking
Questions?

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